

1 REBECCA J. WINTHROP (CA Bar No. 116386)
2 NORTON ROSE FULBRIGHT US LLP
3 555 South Flower Street Forty-First Floor
4 Los Angeles, California 90071
5 Telephone: (213) 892-9200
6 Facsimile: (213) 892-9494
7 rebecca.winthrop@nortonrosefulbright.com

8 Attorneys for Creditors ADVENTIST HEALTH
9 SYSTEM/WEST and FEATHER RIVER
10 HOSPITAL D/B/A ADVENTIST HEALTH
11 FEATHER RIVER

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 In re:
16 PG&E CORPORATION,
17 - and -
18 PACIFIC GAS AND ELECTRIC COMPANY
19 Debtors
20 .

Case No. 19 - 30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**THE ADVENTIST CLAIMANTS’
RENEWED OBJECTION TO THE
DEBTORS’ MOTION FOR ENTRY OF
AN ORDER AUTHORIZING THE
DEBTORS TO ENTER INTO
RESTRUCTURING SUPPORT
AGREEMENT WITH THE CONSENTING
SUBROGATION
CLAIMHOLDERS, ETC. [DE # 3992],
AND OBJECTION TO DEBTOR’S
NOTICE OF FILING OF AMENDED AND
RESTATED RESTRUCTURING
SUPPORT AGREEMENT [DE # 4554]**

- 21 ☐ Affects PG&E Corporation
22 ☐ Affects Pacific Gas and Electric
23 Company
24 ☒ Affects both Debtors

25 * All papers shall be filed in the Lead Case,
26 No. 19-30088 (DM).

Hearing Date and Time:

Date: November 13, 2019

Time: 10:00 a.m. (Pacific Time)

Place: Courtroom 17

450 Golden Gate Ave., 16th Floor
San Francisco, CA 94102

27 Creditors Adventist Health System/West, a California religious non-profit corporation
28 (“Adventist Health”), and Feather River Hospital, a California religious non-profit corporation,

1 d/b/a Adventist Health Feather River (“AHFR” and, collectively with Adventist Health, the
2 “Adventist Claimants”), hereby renew their *Objection* (the “Original Objection”) [DE # 4239] to
3 the Debtors’ *Motion Pursuant to 11 U.S.C. §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and*
4 *9019 for Entry of an Order (I) Authorizing the Debtors to Enter Into the Restructuring Support*
5 *Agreement with the Consenting Subrogation Claimholders; (II) Approving the Terms of*
6 *Settlement With Such Consenting Subrogation Claimholders, Including the Allowed Subrogation*
7 *Claim Amount, and (III) Granting Related Relief* (the “Original RSA Motion”) [DC # 3992], and
8 submit the following additional objections to the new *Amended and Restated Restructuring*
9 *Support Agreement*, filed on November 2, 2019 [the New RSA Agreement] [DE # 4554].

10 **I. ADDITIONAL OBJECTIONS**

11 The New RSA Agreement fails to address the following fundamental inequities of the
12 Debtors’ settlement with the Subordination Claimants:

13 1. It continues to demand third party releases that are not within the Court’s power to
14 impose, and would result in the Subrogation Claimants being guaranteed priority payment in cash
15 in violation of made-whole and subordination principles. This continues to violate 11 U.S.C. §§
16 524(e) and 509, as well as California state law. [See Original Objection, pp. 8-9.]

17 2. The third party releases are not consensual. While the Debtors’ Joint Chapter 11
18 Plan of Reorganization Dated November 4, 2019 [DE # 4564] implements an “opt-in” release
19 (see § 10.9(c)), the New RSA Agreement continues to impose a third party release *as a condition*
20 to any settlement reached with either the Debtors or any settlement trust. [New RSA Agreement,
21 § 3(a)(iii).] This leaves wildfire claimants with the same Hobson’s choice as before—litigate
22 without end at huge cost to each claimant in order to obtain full payment, OR settle for less and
23 be forced to sign the required release. That is not the “purely” consensual release envisioned by
24 *Billington v. Winograde (In re Hotel Mt. Lassen, Inc.)*, 207 B.R. 935, 941 (Bankr. E.D. Cal.
25 1997), the one reported bankruptcy case in the Ninth Circuit acknowledging (in *dicta*) that a third
26 party release may be permissible notwithstanding 11 U.S.C. § 524(e), but only if it is “*purely*
27 *voluntary* on the part of the releasing parties.” *Id.* (emphasis added).

28 Such a release further unfairly discriminates against the wildfire claimants, who are the

1 only parties subject to such an unfair condition. No other tort claimants, be they members of the
2 \$1 billion “Public Entities” tort settlement, a “Governmental Unit” with tort claims (now carved
3 out of the release requirement), or any other non-wildfire claimant with tort claims, is forced to
4 give this release in order to settle with the estates.

5 3 The form of third party release set forth in the New RSA Agreement (attached as
6 Exhibit “B” to the Agreement) (the “Form Release”) continues to require settling wildfire
7 claimants to give up valuable rights against third parties (not just the settling Subrogation
8 Claimants). Wildfire claimants must expressly agree that:

- 9 • “payment of the Claim Amount constitutes *payment in full* on the Claim” [defined as the
10 claim filed against the estates, not the claim being settled]; and
- 11 • “the payment of the Claim Amount . . . *fully satisfies the Releasor’s losses* resulting or
12 arising from the Wildfires.” [New RSA Agreement, Ex. “B” (emphasis added).]

13 These admissions could be used to deprive wildfire claimants of valuable rights to pursue third
14 parties (such as FEMA or third parties who may have acted negligently with respect to the fires)
15 for damages above the settled amount. In other words, third parties (and non-consenting insurers)
16 could try to use the acknowledgements required of all settling wildfire claimants in the Form
17 Release as an admission by the same claimants that they have no further losses to pursue, and
18 thus are now not entitled to any further recovery from any source whatsoever. Such language is
19 entirely unnecessary given the release of the Subrogation Claimants already built into the Form
20 Release, and unduly punitive to the interests of wildfire claimants.

21 The Adventist Claimants have asked the Subrogation Claimants to remove the offending
22 language, but so far the Subrogation Claimants have refused.¹

23 4. The Form Release remains completely unilateral. All that is offered is a promise to
24 include a provision in the order confirming the Debtors’ plan deeming “each holder of a
25 subrogation claim that is a third party beneficiary of this release to have released Releasor from
26 any claim to Releasor’s recovery from the Debtors on account of the Claim.” [New RSA

27 ¹ It also should be noted that the language acknowledging that Releasors are releasing all insurers from only make-
28 whole claims and nothing more in the Form Release (the “Acknowledgement”) is itself deficient. The Form Release
releases all “actions, causes of action, claims, demands, damages, costs, expenses, compensation and other amounts.”
The Acknowledgement preserves only “claims.”

1 Agreement, § 3(a)(iii).]

2 Nothing in the New RSA Agreement, however, conditions the effectiveness of the Form
3 Release upon the entry of a final order containing this language. Nothing conditions the
4 effectiveness of the Form Release upon the claimant's insurer (who may not be a party to the
5 New RSA Agreement) agreeing to be bound by the terms of the Form Release and thus accepting
6 of an order imposing the release on them. As set forth in detail in both the Original Objection and
7 the Tort Creditors Committee's original opposition [DE # 4232], this Court has no power to
8 enforce an order imposing a release on any non-debtor party, third-party beneficiary or
9 otherwise.² Thus, the Adventist Claimants remain in the same untenable position that they held
10 before—giving a release without getting one in return.

11 Furthermore, the scope of this “protection” is impermissibly narrow. By its terms, the
12 language to be included in the Debtors' confirmation order only protects the Releasor's recovery
13 “*from the Debtors* on account of the Claim.” [New RSA Agreement, Ex. “B” (emphasis added).]
14 Nothing protects the Adventist Claimants from attempts to claw back any recoveries that the
15 Adventist Claimants may obtain from non-insurer third parties.

16 Finally, the unilateral nature of the Form Release also flies in the face of the intent of AB
17 1054. Section 3291(a) of California Public Utilities Code requires any insolvency proceeding to
18 provide funding to satisfy “any prepetition wildfire claims . . . in the amounts agreed upon in any
19 post-insolvency settlement agreements.” Leaving wildfire claimants open to lawsuits from non-
20 settling insurers via the one-way release imposed by the New RSA Agreement could expose
21 wildfire claimants to potential claims that they must give back prior payment(s) received under
22 their policies or from third parties. While the Adventist Health Parties do not believe that such
23 claims should ever be successful, insurers should never get a release until they all give a release,
24 and the terms of those releases should be mutual in all respects.

27 ² See *Resorts Int'l Inc. v. Lowenschuss* (*In re Lowenschuss*), 67 F.3d 1394, 1401 (9th Cir. 1995) (“This court has
28 repeated held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-
debtors.”); *Am. Hardwoods, Inc. v. Deutsche Credit Corp.* (*In re Am. Hardwoods, Inc.*), 885 F.2d 621, 626 (9th Cir.
1989) (finding that “the bankruptcy court was powerless to discharge” nondebtor claims in a plan).

1 **II. RESERVATION OF RIGHTS/REMAINING ISSUES**

2 The Adventist Claimants reserve the right to join in objections to the Original RSA
3 Motion filed by other parties, and to raise and be heard on those objections at the hearing.
4 Additionally, the Adventist Claimants renew their objection to any waiver of Bankruptcy Rule
5 6004. Neither the Original RSA Motion and extensive replies offered in support thereof nor any
6 aspect of the New RSA Agreement demonstrates that cause exists to waive the 14 day appeal
7 period.

8 Dated: November 8, 2019

Respectfully submitted:

9 REBECCA J. WINTHROP
10 NORTON ROSE FULBRIGHT US LLP

11 By: /s/ Rebecca J. Winthrop
12 REBECCA J. WINTHROP
13 Attorney for Creditors ADVENTIST
14 HEALTH SYSTEM/WEST and
15 FEATHER RIVER HOSPITAL D/B/A
16 ADVENTIST HEALTH FEATHER
17 RIVER